

## TITLE V

### MOTIONS

#### **RULE 55. MOTION TO RESTRAIN ASSESSMENT OR COLLECTION OR TO ORDER REFUND OF AMOUNT COLLECTED\***

A motion to restrain assessment or collection or to order refund of amount collected may be filed with the Court only where a timely petition has been filed with the Court. See Code Sections 6015(e)(B)(ii), 6213(a), 6225(b), 6246(b). For the rules applicable to captions, signing, and other matters of form and style of motions, see Rule 50(a).

~~A motion to restrain assessment or collection where a petition has been filed with this Court, made pursuant to Code Section 6213(a), shall include as exhibits a copy of each notice of assessment and each collection notice in respect of which the motion is filed. For the rules applicable to captions, signing, and other matters of form and style of motions, see Rule 50(a).~~

## TITLE XIV

### TRIALS

---

\* The amendments, insofar as they relate to Code Section 6015(e)(B)(ii), are effective for any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of July 22, 1998; insofar as they relate to Code Section 6213(a), are effective as of July 22, 1998; insofar as they relate to Code Section 6225(b), are effective for partnership tax years ending after August 5, 1997; and insofar as they relate to Code Section 6246(b), are effective for partnership tax years ending on or after December 31, 1997.

## RULE 142. BURDEN OF PROOF

**\*(a) General:** (1) The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(2) See Code Section 7491 where credible evidence is introduced by the taxpayer, or any item of income is reconstructed by the Commissioner based on statistical information on unrelated taxpayers, or any penalty, addition to tax, or additional amount is determined by the Commissioner.

**(b) Fraud:** In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. Code Section 7454(a).

**(c) Foundation Managers; Trustees; Organization Managers:**  
In any case involving the issue of the knowing conduct of a foundation manager as set forth in the provisions of Code Section 4941, 4944, or 4945, or the knowing conduct of a trustee as set forth in the provisions of Code Section 4951 or 4952, or the knowing conduct of an organization manager as set forth in the provisions of Code Section 4912 or 4955, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. Code

---

\* The amendments are effective for court proceedings arising in connection with examinations commencing after July 22, 1998; except that in any case in which there is no examination, the amendments apply to court proceedings arising in connection with taxable periods or events beginning or occurring after July 22, 1998.

Section 7454(b).

**(d) Transferee Liability:** The burden of proof is on the respondent to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. Code Section 6902(a).

**(e) Accumulated Earnings Tax:** Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with respect to such allegation is determined in accordance with Code Section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code Section 534(c), the Court will ordinarily, on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is sufficient to shift the burden of proof to the respondent to the limited extent set forth in Code Section 534(a)(2).

**(f) Other:** For the burden of proof in cases submitted without trial, see Rule 122(b); in declaratory judgment actions, see Rule 217(c); in disclosure actions, see Rule 229; in claims for litigation and administrative costs, see Rule 232(e); and in administrative costs actions, see Rule 270(d).

## **TITLE XVII**

### **SMALL TAX CASES**

#### **RULE 171. SMALL TAX CASE DEFINED\***

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds

(1) ~~\$10,000~~ 50,000 for any one taxable year in the case of income taxes,

(2) ~~\$10,000~~ 50,000 in the case of estate taxes,

(3) ~~\$10,000~~ 50,000 for any one calendar year in the case of gift taxes, or

(4) ~~\$10,000~~ 50,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excise taxes under Code Chapter 41, 42, 43, or 44 (taxes on certain organizations and persons dealing with them) or under Code Chapter 45 (windfall profit tax);

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not issued an order in accordance with Rule 172(c) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

#### **RULE 173. DISCONTINUANCE OF PROCEEDINGS\*\***

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may

---

\* The amendments are effective with respect to proceedings commenced after July 22, 1998.

\* The amendment is effective with respect to proceedings commenced after July 22, 1998.

order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the Rules of Practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed ~~\$10,000~~ 50,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

## **TITLE XVIII**

### **SPECIAL TRIAL JUDGES**

#### **RULE 182. CASES INVOLVING ~~\$10,000~~ 50,000 OR LESS\***

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other cases where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds ~~\$10,000~~ 50,000:

**(a) Small Tax Cases:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a small tax case shall, as soon after such trial as shall be practicable, prepare a summary of the facts and reasons for the proposed disposition of the case, which then shall be submitted promptly to the Chief Judge,

---

\* The amendments are effective with respect to proceedings commenced after July 22, 1998.

or, if the Chief Judge shall so direct, to a Judge or Division of the Court.

**(b) Other Cases Involving ~~\$10,000~~ 50,000 or Less:** Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds ~~\$10,000~~ 50,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

**(c) Decision:** The Chief Judge may authorize the Special Trial Judge to make the decision of the Court in any small tax case (as defined in Rule 171) and in any other case where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds ~~\$10,000~~ 50,000, subject to such conditions and review as the Chief Judge may provide.

**RULE 183. CASES INVOLVING MORE THAN ~~\$10,000~~ 50,000\***

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

**(a) Trial and Briefs:** A Special Trial Judge shall conduct the trial of any such case assigned for such purpose. After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no

---

\* The amendment is effective with respect to proceedings commenced after July 22, 1998.

further briefs shall be filed.

**(b) Special Trial Judge's Report:** After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall submit a report, including findings of fact and opinion, to the Chief Judge, and the Chief Judge will assign the case to a Judge or Division of the Court.

**(c) Action on the Report:** The Judge to whom or the Division to which the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may direct the filing of additional briefs or may receive further evidence or may direct oral argument, or may recommit the report with instructions. Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

## **TITLE XXI**

### **DECLARATORY JUDGMENTS\***

#### **RULE 210. GENERAL**

---

\* Amendments to Title XXI set forth procedures for declaratory judgment actions under Code Sections 7477 and 7479, added by sections 506(c)(1) and 505(a), respectively, of the Taxpayer Relief Act of 1997, Pub. L. 105-34, 111 Stat. 854 (1997). Code Section 7477 provides for a declaratory judgment relating to the valuation of a gift and is effective for gifts made after August 5, 1997. Code Section 7479 provides for a declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code Section 6166 and is effective with respect to estates of decedents dying after August 5, 1997. The amendments to the Rules of this Title XXI with respect to gift valuation actions are effective with respect to gifts made after August 5, 1997. The amendments with respect to estate tax installment payment actions are effective with respect to estates of decedents dying after August 5, 1997. The amendment with respect to oversheltered return actions is effective with respect to oversheltered return actions commenced with respect to partnership tax years ending after August 5, 1997.

**(a) Applicability:** The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions relating to the qualification of certain retirement plans, the value of certain gifts, the status of certain governmental obligations, the eligibility of an estate with respect to installment payments under Code Section 6166, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. For the Rules which apply to declaratory judgment actions relating to treatment of items other than partnership items with respect to an oversheltered return, see the Rules contained in Title XXX. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment.

**(b) Definitions:** As used in the Rules in this Title--

(1) "Retirement plan" has the meaning provided by Code Section 7476(c).

(2) A "gift" is any transfer of property that was shown on the return of tax imposed by Chapter 12 or disclosed on such return or in any statement attached to such return.

~~(2)~~ (3) "Governmental obligation" means an obligation the status of which under Code Section 103(a) is in issue.

(4) An "estate" is any estate whose initial or continuing eligibility with respect to the deferral and installment payment election under Code Section 6166 is in issue.

~~(3)~~ (5) "Exempt organization" is an organization described in Code Section 501(c)(3) which is exempt from tax under Code



Section 501(a) or is an organization described in Code Section 170(c)(2).

~~(4)~~ (6) "Private foundation" is an organization described in Code Section 509(a).

~~(5)~~ (7) "Private operating foundation" is an organization described in Code Section 4942(j)(3).

~~(6)~~ (8) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.

~~(7)~~ (9) A "determination" means--

(A) A determination with respect to the initial or continuing qualification of a retirement plan;

(B) A determination of the value of any gift;

~~(B)~~ (C) A determination as to whether prospective governmental obligations are described in Code Section 103(a); or

(D) A determination as to whether, with respect to an estate, an election may be made under Code Section 6166 or whether the extension of time for payment of estate tax provided in Code section 6166 has ceased to apply.

~~(C)~~ (E) A determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

~~(8)~~ (10) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or

as a private foundation or private operating foundation, is no longer qualified or classified as such an organization.

~~(9)~~ (11) "Action for declaratory judgment" is either a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action, as follows:

(A) A "retirement plan action" means an action for declaratory judgment provided for in Code Section 7476 with respect relating to the initial or continuing qualification of a retirement plan.

(B) A "gift valuation action" means an action for declaratory judgment provided for in Code Section 7477 relating to the valuation of a gift.

~~(B)~~ (C) A "governmental obligation action" means an action for declaratory judgment provided for in Code Section 7478 with respect relating to the status of certain prospective governmental obligations.

(D) An "estate tax installment payment action" means an action for declaratory judgment provided for in Code Section 7479 relating to the eligibility of an estate with respect to installment payments under Code Section 6166.

~~(C)~~ (E) An "exempt organization action" means a declaratory judgment action provided for in Code Section 7428 with respect relating to the initial or continuing qualification of an organization as an exempt organization, or with respect relating to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

~~(10)~~ (12) "Administrative record" includes, where

~~applicable,~~ the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination of such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. ~~In addition--~~

~~(A) In the case of a determination relating to a retirement plan, the administrative record shall include the retirement plan and any related trust instruments, any written modifications thereof made by the applicant during the proceedings in respect of the request for determination before the Internal Revenue Service, and all written comments (and related correspondence) submitted to the Internal Revenue Service in those proceedings (see Section 3001(b) of the Employee Retirement Income Security Act of 1974; 29 U.S.C. sec. 1201(b)).~~

~~(B) In the case of a determination relating to an exempt organization or a private foundation or a private operating foundation, the administrative record shall include the charter or articles of incorporation or association, or trust indenture or agreement, and any similar or related documents of the organization and any modifications thereof.~~

~~(11)~~ (13) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. ~~In a gift valuation action, only the donor may be a petitioner. In a governmental obligation~~

action, only the prospective issuer may be a petitioner. In an estate tax installment payment action, a person joined pursuant to Code Section 7479(b)(1)(B) is also a party. In an exempt organization action, only the organization may be a petitioner, ~~and in a governmental obligation action, only the prospective issuer may be a petitioner.~~

~~(12)~~ (14) "Declaratory Judgment" is the decision of the Court in a retirement plan action, a gift valuation action, a governmental obligation action, an estate tax installment payment action, or an exempt organization action.

**(c) Jurisdictional Requirements:** The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of either a request for determination as to the status of prospective governmental obligations or a request for determination as to the initial or continuing eligibility of an estate with respect to installment payments under Code Section 6166) after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code Section 7476(a)(2)(B). In the case of a gift valuation action, the Court has jurisdiction if the Commissioner has issued a notice of determination. See Code

Section 7477(a).

(2) There is an actual controversy. In that connection--

(A) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(B) In the case of a governmental obligation action, the prospective issuer has, prior to the commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

(C) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified ~~by~~ **in** Code Section 7476(b)(5) with respect to a retirement plan action, **or the period specified in Code Section 7477(b)(3) with respect to a gift valuation action,** or the period specified in Code Section 7478(b)(3) with respect to a governmental obligation action, **or the period specified in Code Section 7479(b)(3) with respect to an estate tax installment payment action,** or the period specified ~~by~~ **in** Code Section 7428(b)(3) with respect to an exempt organization action. See Code Section 7502.

(4) The petitioner has exhausted all administrative remedies which were available to the petitioner within the Internal Revenue Service.

**(d) Form and Style of Papers:** All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, shall be prepared in the

form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.

**RULE 211. COMMENCEMENT OF ACTION FOR  
DECLARATORY JUDGMENT**

**(a) Commencement of Action:** An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.

**(b) Content of Petition:** Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)", "~~Petition for Declaratory Judgment (Gift Valuation)~~", ~~or~~ "Petition for Declaratory Judgment (Governmental Obligation)", ~~or~~ "~~Petition for Declaratory Judgment (Estate Tax Installment Payment)~~", or "Petition for Declaratory Judgment (Exempt Organization)", as the case may be. Each such petition shall contain the allegations described in paragraph (c), (d), ~~or~~ (e), (f), or (g) of this Rule. A claim for reasonable litigation or administrative costs shall not be included in the petition in a declaratory judgment action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

**(c) Petition in Retirement Plan Action:** The petition in a retirement plan action shall contain:

(1) *All Petitions:* All petitions in retirement plan actions shall contain the following:

(A) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

(B) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing.

(2) *Employer Petitions:* In addition to including the information described in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(A) A separate numbered paragraph stating that the employer has complied with the requirements of the regulations issued under Code Section 7476(b)(2) with respect to notice to other interested parties;

(B) A separate numbered paragraph stating that the employer has exhausted the employer's administrative remedies within the Internal Revenue Service;

(C) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code Section 7476(b)(4);

(D) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify--

(i) the date of the notice of the Commissioner's determination,

(ii) a copy of such notice of determination,

(iii) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which the employer alleges to have been committed by the Commissioner in the determination, and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that--

(i) the requested determination is of the type described in Code Section 7476(a)(1) or (2),

(ii) no determination has been made by the Commissioner in response thereto, and

(iii) the retirement plan does qualify;

(F) An appropriate prayer for relief; and

(G) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(3) *Petitions Filed by Plan Administrators:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:

(A) The name, address, and principal place of business, or principal office or agency, of the employer who is required to contribute under the plan; and

(B) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.

(4) *Employee Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:

(A) A separate numbered paragraph setting forth a statement that the employee has qualified as an interested party in



accordance with the regulations issued under Code Section 7476(b)(1);

(B) In separate numbered paragraphs, the statements described in subparagraph (2)(B) and (C) of paragraph (c) of this Rule;

(C) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(D)(i), (iii), and (iv) of paragraph (c) of this Rule;

(D) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which the employee relies to assert that such plan does not qualify and the facts to support each ground;

(E) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies--

(i) if the employee alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(E) of this Rule, or

(ii) if the employee alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(E) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered

subparagraph, upon which the employee relies to support the allegation that such plan does not qualify and the facts relied upon to support each ground; and

(F) In separate numbered paragraphs, the statements described in paragraph (c)(2)(F) and (G) of this Rule.

(5) *Petitions Filed by the Pension Benefit Guaranty Corporation:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(B), (C), (D), (E), and (F) of this Rule.

**(d) Petition in Gift Valuation Action:** The petition in a gift valuation action shall contain:

(1) The petitioner's name, legal residence, mailing address, and identification number (e.g., Social Security number or employer identification number);

(2) A statement that the petitioner is the donor of a gift described in Code Section 7477(a);

(3) A statement that the petitioner has exhausted all administrative remedies within the Internal Revenue Service;

(4) With respect to the Commissioner's notice of determination--

(A) the date of the notice of determination;

(B) a copy of the notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(D) a statement of facts upon which the petitioner relies to support each such claim;

(5) An appropriate prayer for relief; and

(6) The signature, mailing address, and telephone number of the petitioner or petitioner's counsel, as well as counsel's Tax Court bar number.

~~(d)~~ **(e) Petition in Governmental Obligation Action:** The petition in a governmental obligation action shall contain:

(1) The petitioner's name and address;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a prospective issuer of governmental obligations described in Code Section 103(a) which has adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations;

(4) A statement that the petitioner has exhausted its administrative remedies;

(5) Where the Commissioner has issued a determination--

(A) the date of the notice of determination;

(B) a copy of such notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(D) a statement of facts upon which the petitioner relies to support each such claim;

(6) Where the Commissioner has not issued a notice of

determination, separate numbered paragraphs stating that--

(A) no such determination has been made by the Commissioner; and

(B) the prospective governmental obligations are described in Code Section 103(a);

(7) An appropriate prayer for relief; and

(8) The signature, mailing address, and telephone number of the petitioner or its counsel, as well as counsel's Tax Court bar number.

**(f) Petition in Estate Tax Installment Payment Action:** The petition in an estate tax installment payment action shall contain:

(1) *All Petitions:*

(A) The petitioner's name and address;

(B) The decedent's name, legal residence at the date of death, and identification number (e.g., Social Security number or employer identification number) and the jurisdiction in which the estate was admitted to probate;

(C) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing; and

(D) A statement that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service;

(E) Where the Commissioner has issued a determination either that the estate may not make the election under Code Section 6166 or that the extension of time for payment of tax provided in Code Section 6166 has ceased to apply with respect to

the estate--

(i) the date of the notice of the Commissioner's determination,

(ii) a copy of such notice of determination,

(iii) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which the petitioner alleges to have been committed by the Commissioner in the determination, and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(F) Where the Commissioner has not issued a notice of determination as to the initial or continuing eligibility of the estate with respect to installment payments under Code Section 6166, separate numbered paragraphs stating that--

(i) the requested determination is of the type described in Code Section 7479(a)(1) or (2),

(ii) no determination has been made by the Commissioner in response thereto, and

(iii) the estate is eligible;

(G) An appropriate prayer for relief; and

(H) The signature, mailing address, and telephone number of petitioner or petitioner's counsel, as well as counsel's Tax Court bar number.

(2) *Petitions Filed by Executors:* In addition to including the information specified in paragraph (f)(1) of this Rule, a petition filed by an estate's executor shall contain a separate numbered paragraph stating that the petition has been filed on behalf of an executor.

(3) *Petitions Filed by Persons Who Have Assumed an Obligation to Make Payments Under Code Section 6166:* In addition to including the information specified in paragraph (f)(1) of this Rule, a petition filed by a person, or persons, who has, or have, assumed an obligation to make payments under Code Section 6166 with respect to an estate shall also contain:

(A) A separate numbered paragraph stating that the person, or persons, has, or have, assumed an obligation to make payments under Code Section 6166 with respect to the estate; and

(B) In a separate numbered paragraph, the name and address of each other person who has assumed such obligation and is not a party to the action.

~~(e)~~ **(g) Petition in Exempt Organization Action:** The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency;

(2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed;

(3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;

(4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;

(5) Where the Commissioner has issued a determination--

(A) the date of the notice of determination;

(B) a copy of such notice of determination;

(C) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and

(D) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that--

(A) no such determination has been made by the Commissioner; and

(B) the organization is qualified under Code Section 501(c)(3) or 170(c)(2), or should be classified with respect to Code Section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;

(7) An appropriate prayer for relief; and

(8) The signature, mailing address, and telephone number of the petitioner or its counsel, as well as counsel's Tax Court bar number.

~~(f)~~ **(h) Service:** For the provisions relating to service of the petition and other papers, see Rule 21.

#### **RULE 215. JOINDER OF PARTIES**

**(a) Joinder in Retirement Plan Action:** The joinder of parties in retirement plan actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code Section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has

issued a notice of determination with respect to the qualification of the plan, then any person joining in the petition must do so within the period specified in Code Section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, then see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue (see Rule 214). Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service, see Form 10, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person



will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absent person's absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

**(b) Joinder in Estate Tax Installment Payment Action:** The joinder of parties in estate tax installment payment actions shall be subject to the following requirements:

(1) *Permissive Joinder:* Any person who, under Code Section 7479(b)(1), is entitled to commence an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code Section 6166 may join in filing a petition with any other such person in such an action with respect to such estate. If the Commissioner has issued a notice of determination with respect to the eligibility of the estate, then any person joining in the petition must do so within the period specified in Code Section 7479(b)(3). If more than one petition is filed with respect to the eligibility of the same estate, then see Rule 141 (relating to the possibility of

consolidating the actions with respect to the estate).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment relating to the eligibility of an estate with respect to installment payments under Code Section 6166 may move to have joined in the action any executor or any person who has assumed an obligation to make payments under Code Section 6166 with respect to such estate. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue (see Rule 214). Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshall or by a deputy marshal, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service, see Form 10, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory

judgment, or, in the case of an action brought by a person described in Code Section 7479(b)(1)(B), is another such person described in Code Section 7479(b)(1)(B), and that such person has not been joined, then the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in the absence of such person, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

**~~(b)~~ (c) Joinder of Parties in Gift Valuation, Governmental Obligation, and Exempt Organization and in Governmental**

**Obligation Actions:** Joinder of parties is not permitted in a gift valuation action, in a governmental obligation action, or in an exempt organization action ~~or in a governmental obligation action~~. See Code Sections 7477(b)(1), ~~7428(b)(1) and~~ 7478(b)(1), and 7428(b)(1). With respect to consolidation of actions, see Rule 141.

**RULE 217. DISPOSITION OF ACTIONS FOR  
DECLARATORY JUDGMENT**

**(a) General:** Disposition of an action for declaratory judgment, ~~which does not involve either a revocation or the status of a governmental obligation,~~ which involves the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(10). Only with the permission of the Court, upon

good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation, a gift valuation, or the eligibility of an estate with respect to installment payments under Code Section 6166 may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute. Disposition of a governmental obligation action will be made on the basis of the administrative record, augmented by additional evidence to the extent that the Court may direct.

**(b) Procedure:** (1) *Disposition on the Administrative Record:* Within 30 days after service of the answer, the parties shall file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(10), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for the Commissioner in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. ~~Except in a case~~

~~involving a revocation or the status of a governmental obligation~~  
In an action involving the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In ~~the case of~~ an action involving a gift valuation, the eligibility of an estate with respect to installment payments under Code Section 6166, a revocation, or the status of a governmental obligation ~~action~~, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record. ~~In the case of a governmental obligation action, see the last sentence of paragraph (a) of this Rule. See subparagraph (3) of this paragraph.~~

(2) *Other Dispositions Without Trial:* In addition, an action for declaratory judgment may be decided on a motion for a judgment on the pleadings under Rule 120 or on a motion for summary judgment under Rule 121 or such an action may be submitted at any time by notice of the parties filed with the Court in accordance with Rule 122.

(3) *Disposition Where Trial is Required:* Whenever a trial is required in an action for declaratory judgment, such trial shall be conducted in accordance with the Rules contained in Title XIV, except as otherwise provided in this Title.

**(c) Burden of Proof:** The burden of proof in declaratory

judgment actions shall be as follows:

(1) *Retirement Plan Actions:* (A) *Parties Petitioner:* In all cases, the burden of proof shall be upon the petitioner as to jurisdictional requirements. The burden of proof shall be upon the petitioner, and upon any party joining or intervening on the petitioner's side, as to those grounds set forth in the ~~respondent's~~ notice of determination that a retirement plan does not qualify. If the ~~respondent~~ Commissioner has determined that a retirement plan does qualify, then the petitioner, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to every ground on which each such party relies to sustain such party's position that such plan does not qualify. If the Commissioner has failed to issue a notice of determination, then--

(i) the petitioner who contends that the retirement plan does qualify, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to the jurisdictional requirements described in Rule 210(c) and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that ~~the~~ no notice of determination has been issued by the Commissioner; but

(ii) the petitioner who contends that the retirement plan does not qualify, and any party joining or intervening on the petitioner's side, shall bear the burden of proof as to the matters set forth in subparagraph (1)(A)(i) of this paragraph (c) and also as to the grounds and supporting facts on which each such party relies for such party's claim that the plan does not

qualify.

(B) *Parties Respondent:* The burden of proof shall be upon the respondent, and upon any party joining or intervening on the respondent's side, as to any ground not stated in the notice of determination upon which either relies to sustain the ~~respondent's~~ Commissioner's determination that a retirement plan does not qualify. If the ~~respondent~~ Commissioner has not issued a notice of determination, then the respondent, and any party joining or intervening on the respondent's side, shall bear the burden of proof as to every ground upon which either relies to sustain the position that such plan does not qualify. See also subparagraph (1)(A)(ii) of this paragraph (c).

(2) *Gift Valuation Actions:* The burden of proof shall be upon the petitioner as to jurisdictional requirements and as to the value of a gift.

(3) *Estate Tax Installment Payment Actions:* (A) *Parties Petitioner:* The burden of proof shall be upon the petitioner as to jurisdictional requirements. The burden of proof shall be upon the petitioner, and upon any party joining on the petitioner's side, as to those grounds set forth in the notice of determination. If the Commissioner has failed to issue a notice of determination, then the petitioner, and any party joining with the petitioner, shall bear the burden of proof as to the jurisdictional requirements described in Rule 210(c) and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner;

(B) *Respondent*: The burden of proof shall be upon the respondent as to any ground upon which the respondent relies and which is not stated in the notice of determination. If the Commissioner has not issued a notice of determination, then the respondent shall bear the burden of proof as to every ground upon which the respondent relies to sustain the respondent's position, other than those matters as to which the burden is upon the petitioner, and any party joining with the petitioner, under subparagraph (3)(A) of this paragraph (c) where such notice is not issued.

~~(2)~~ (4) *Other Actions*: (A) *Petitioner*: The burden of proof shall be upon the petitioner as to jurisdictional requirements and as to the grounds set forth in the notice of determination. If the Commissioner has failed to issue a notice of determination, then the burden of proof shall be on the petitioner with respect to jurisdictional requirements, and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner.

(B) *Respondent*: The burden of proof shall be upon the respondent as to any ground upon which the respondent relies and which is not stated in the notice of determination. If the ~~respondent~~ Commissioner has not issued a notice of determination, then the respondent shall bear the burden of proof as to every ground relied upon to sustain the respondent's position, other than those matters as to which the burden is on the petitioner under subparagraph ~~(2)~~ (4)(A) of this paragraph (c) where such a



notice is not issued.

## TITLE XXIII

### CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

#### RULE 231. CLAIMS FOR LITIGATION AND ADMINISTRATIVE COSTS

**(a) Time and Manner of Claim:** (1) *Agreed Cases:* Where the parties have reached a settlement which disposes of all issues in the case including litigation and administrative costs, an award of reasonable litigation and administrative costs, if any, shall be included in the stipulated decision submitted by the parties for entry by the Court.

(2) *Unagreed Cases:* Where a party has substantially prevailed and wishes to claim reasonable litigation or administrative costs, and there is no agreement as to that party's entitlement to such costs, a claim shall be made by motion filed--

(A) Within 30 days after the service of a written opinion determining the issues in the case;

(B) Within 30 days after the service of the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof); or

(C) After the parties have settled all issues in the case other than litigation and administrative costs. See paragraphs (b)(3) and (c) of this Rule regarding the filing of a stipulation of settlement with the motion in such cases.

**(b) Content of Motion:** A motion for an award of reasonable litigation or administrative costs shall be in writing and shall

contain the following:

(1) A statement that the moving party is a party to a deficiency or liability action, a partnership action, or a declaratory judgment action, and that any such action was commenced after February 28, 1983;

(2) If the claim includes a claim for administrative costs, a statement that the administrative proceeding was commenced after November 10, 1988;

(3) A statement sufficient to demonstrate that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding, including a stipulation in the form prescribed by paragraph (c) of this Rule as to any settled issues;

(4) A statement that the moving party meets the net worth requirements, if applicable, of Section 2412(d)(2)(B) of title 28, United States Code (as in effect on October 22, 1986), which statement shall be supported by an affidavit executed by the moving party and not by counsel for the moving party;

(5) A statement that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(6) A statement that the moving party has not unreasonably protracted the Court proceeding and, if the claim includes a claim for administrative costs, the administrative proceeding;

(7) A statement of the specific litigation and administrative costs for which the moving party claims an award,

supported by an affidavit in the form prescribed in paragraph (d) of this Rule;

(8) If the moving party requests a hearing on the motion, a statement of the reasons why the motion cannot be disposed of by the Court without a hearing (see Rule 232(a)(2) regarding the circumstances in which the Court will direct a hearing); and

(9) An appropriate prayer for relief.

**(c) Stipulation as to Settled Issues:** If some or all of the issues in a case (other than litigation and administrative costs) have been settled by the parties, then a motion for an award of reasonable litigation or administrative costs shall be accompanied by a stipulation, signed by the parties or by their counsel, setting forth the terms of the settlement as to each such issue (including the amount of tax involved). A stipulation of settlement shall be binding upon the parties unless otherwise permitted by the Court or agreed upon by those parties.

**(d) Affidavit in Support of Costs Claimed:** A motion for an award of reasonable litigation or administrative costs shall be accompanied by a detailed affidavit by the moving party or counsel for the moving party which sets forth distinctly the nature and amount of each item of costs paid or incurred for which an award is claimed.

**\*(e) Qualified Offer:** If a qualified offer was made by the moving party as described in Code Section 7430(g), then a motion for award of reasonable litigation or administrative costs shall be accompanied by a copy of such offer.

---

\* The amendment is effective with respect to costs incurred and services performed after January 19, 1999.

**RULE 232. DISPOSITION OF CLAIMS FOR LITIGATION  
AND ADMINISTRATIVE COSTS**

**(a) General:** A motion for reasonable litigation or administrative costs may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after the Commissioner's written response to the motion is filed. (See paragraph (b)).

(2) After the Commissioner's response is filed, the Court may direct that the moving party file a reply to the Commissioner's response. Additionally, the Court may direct a hearing, which will be held at a location that serves the convenience of the parties and the Court. A motion for reasonable litigation or administrative costs ordinarily will be disposed of without a hearing unless it is clear from the motion, the Commissioner's written response, and the moving party's reply that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

**(b) Response by the Commissioner:** The Commissioner shall file a written response within 60 days after service of the motion. The Commissioner's response shall contain the following:

(1) A clear and concise statement of each reason why the Commissioner alleges that the position of the Commissioner in the Court proceeding and, if the claim includes a claim for administrative costs, in the administrative proceeding, was substantially justified, and a statement of the facts on which the Commissioner relies to support each of such reasons;

(2) A statement whether the Commissioner agrees that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of

issues presented either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding;

(3) A statement whether the Commissioner agrees that the moving party meets the net worth requirements, if applicable, as provided by law;

(4) A statement whether the Commissioner agrees that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(5) A statement whether the Commissioner agrees that the moving party has not unreasonably protracted the Court proceeding and, if the claim includes a claim for administrative costs, the administrative proceeding;

(6) A statement whether the Commissioner agrees that the amounts of costs claimed are reasonable; and

(7) The basis for the Commissioner's disagreeing with any such allegations by the moving party.

If the Commissioner agrees with the moving party's request for a hearing, or if the Commissioner requests a hearing, then such response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing.

**(c) Conference Required:** After the date for filing Commissioner's written response and prior to the date for filing a reply, if one is required by the Court, counsel for the Commissioner and the moving party or counsel for the moving party shall confer and attempt to reach an agreement as to each of the allegations by the parties. The Court expects that, at such conference, the moving party or counsel for the moving party

shall make available to counsel for the Commissioner substantially the same information relating to any claim for attorney's fees which, in the absence of an agreement, the moving party would be required to file with the Court pursuant to paragraph (d) of this Rule.

**\*(d) Additional Affidavit:** Where the Commissioner's response indicates that the Commissioner and the moving party are unable to agree as to the amount of attorney's fees which is reasonable, counsel for the moving party shall, within 30 days after service of the Commissioner's response, file an additional affidavit which shall include:

(1) A detailed summary of the time expended by each individual for whom fees are sought, including a description of the nature of the services performed during each period of time summarized. Each such individual is expected to maintain contemporaneous, complete, and standardized time records which accurately reflect the work done by such individual. Where the reasonableness of the hours claimed becomes an issue, counsel is expected to make such time records available for inspection by the Court or by counsel for the Commissioner upon request.

(2) The customary fee for the type of work involved. Counsel shall provide specific evidence of the prevailing community rate for the type of work involved as well as specific evidence of counsel's actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits of other counsel with similar qualifications

---

\* The amendment is effective with respect to costs incurred and services performed after January 19, 1999.

reciting the precise fees they have received from clients in comparable cases, by evidence of recent fees awarded by the courts or through settlement to counsel of comparable reputation and experience performing similar work, or by reliable legal publications.

(3) A description of the fee arrangement with the client. If any part of the fee is payable only on condition that the Court award such fee, the description shall specifically so state.

(4) The preclusion of other employment by counsel, if any, due to acceptance of the case.

(5) Any time limitations imposed by the client or by the circumstances.

(6) Any other problems resulting from the acceptance of the case.

(7) The professional qualifications and experience of each individual for whom fees are sought.

(8) The nature and length of the professional relationship with the client.

(9) Awards in similar cases, if any.

(10) A statement whether there is a special factor, such as the limited availability of qualified attorneys for the case, the difficulty of the issues presented in the case, or the local availability of tax expertise, to justify a rate in excess of \$110 per hour.

(11) Any other information counsel believes will assist the Court in evaluating counsel's claim, which may include, but shall not be limited to, information relating to the novelty and

difficulty of the questions presented, the skill required to perform the legal services properly, and any efforts to settle the case.

Where there are several counsel of record, all of whom are members of or associated with the same firm, an affidavit filed by first counsel of record or that counsel's designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit by each counsel of record shall not be required.

**(e) Burden of Proof:** The moving party shall have the burden of proving that the moving party has substantially prevailed, that the moving party has exhausted the administrative remedies available to the moving party within the Internal Revenue Service, that the moving party has not unreasonably protracted the Court proceeding or, if the claim includes a claim for administrative costs, the administrative proceeding, that the moving party meets the net worth requirements, if applicable, as provided by law, that the amount of costs claimed is reasonable, and that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented either in the Court proceeding or, if the claim includes a claim for administrative costs, in the administrative proceeding; except that the moving party shall not be treated as the prevailing party if the Commissioner establishes that the position of the Commissioner was substantially justified. See Code Section 7430(c)(4)(B).

**(f) Disposition:** The Court's disposition of a motion for reasonable litigation or administrative costs shall be included in the decision entered in the case. Where the Court in its



opinion states that the decision will be entered under Rule 155, or where the parties have settled all of the issues other than litigation and administrative costs, the Court will issue an order granting or denying the motion and determining the amount of reasonable litigation and administrative costs, if any, to be awarded. The parties, or either of them, shall thereafter submit a proposed decision including an award of any such costs, or a denial thereof, for entry by the Court.

## **TITLE XXV**

### **SUPPLEMENTAL PROCEEDINGS**

#### **RULE 261. PROCEEDING TO REDETERMINE INTEREST ~~ON DEFICIENCY~~\***

**(a) Commencement of Proceeding:** (1) *How Proceeding Is Commenced:* A proceeding to redetermine interest on a deficiency assessed under Code Section 6215 **or to redetermine interest on an overpayment determined under Code Section 6512(b)** shall be commenced by filing a motion with the Court. The petitioner shall place on the motion the same docket number as that of the action in which the Court redetermined the deficiency **or determined the overpayment.**

(2) *When Proceeding May Be Commenced:* Any proceeding under this Rule must be commenced within one year after the date that the Court's decision becomes final within the meaning of Code Section 7481(a).

**(b) Content of Motion:** A motion to redetermine interest

---

\* The amendments are effective on August 5, 1997.

filed pursuant to this Rule shall contain ~~the following~~:

(1) *All motions:* All motions to redetermine interest shall contain the following:

(A) The petitioner's identification number (e.g., Social Security number or employer identification number) and current mailing address.

(B) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.

(C) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.

(2) *Motions to Redetermine Interest on a Deficiency:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on a deficiency shall also contain:

(A) A statement that the petitioner has paid the entire amount of the deficiency assessed under Code Section 6215 plus interest claimed by the Commissioner in respect of which the proceeding under this Rule has been commenced.

~~(3)~~ (B) A schedule setting forth--

~~(A)~~ (i) the amount of each payment made by the petitioner in respect of the deficiency and interest described in paragraph (b)(2)(A) of this Rule,

~~(B)~~ (ii) the date of each such payment, and

~~(C)~~ (iii) if applicable, the part of each such payment allocated by the petitioner to tax and the part of each such

payment allocated by the petitioner to interest.

~~(4) A statement setting forth the petitioner's contentions regarding the correct amount of interest, together with a schedule detailing the computation of that amount.~~

~~(5) A statement whether the petitioner has discussed the dispute over interest with the Commissioner, and if so, the contentions made by the petitioner; and if not, the reason or reasons why not.~~

~~(6)~~ (iv) A copy of the Court's decision which redetermined the deficiency, together with a copy of any notice of assessment including any supporting schedules or any collection notice that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

(3) *Motions to Redetermine Interest on an Overpayment:* In addition to including the information described in paragraph (b)(1) of this Rule, a motion to redetermine interest on an overpayment shall also contain:

(A) A statement that the Court has determined under Code Section 6512(b) that the petitioner has made an overpayment.

(B) A schedule setting forth--

(i) the amount and date of each payment made by the petitioner in respect of which the overpayment was determined, and

(ii) the amount and date of each credit, offset, or refund received from the Commissioner in respect of the overpayment and interest claimed by the petitioner.

(C) A copy of the Court's decision which determined the

overpayment, together with a copy of any notice of credit or offset or other correspondence that the petitioner may have received from the Commissioner, in respect of which the proceeding under this Rule has been commenced.

~~(7)~~ (4) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

**(c) Response by Commissioner:** Within 60 days after service of a motion filed pursuant to this Rule, the Commissioner shall file a written response. The response shall specifically address each of the contentions made by the petitioner regarding the correct amount of interest and the petitioner's computation of that amount. The Commissioner shall attach to the Commissioner's response a schedule detailing the computation of interest claimed to be owed to or due from by the Commissioner and, in the case of a motion to redetermine interest on an overpayment, the amount and date of each credit, offset, or refund made by the Commissioner and, if applicable, the part of each such credit, offset, or refund allocated by the Commissioner to the overpayment and the part of each such credit, offset, or refund allocated by the Commissioner to interest. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall

include a statement of the reasons why no hearing is required.

**(d) Disposition of Motion:** A motion to redetermine interest filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

**(e) Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court redetermined the deficiency ~~or determined the overpayment~~ the interest ~~paid~~ in respect of which the petitioner now seeks a redetermination will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

## TITLE XXVI

### ACTIONS FOR ADMINISTRATIVE COSTS

#### RULE 270. GENERAL

**(a) Applicability:** The Rules of this Title XXVI set forth the special provisions which apply to actions for administrative costs under Code Section 7430(f)(2). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for administrative costs.

**(b) Definitions:** As used in the Rules in this Title--

(1) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(2) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney) admitted to practice before the Court or authorized to practice before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(3) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

**\*(c) Jurisdictional Requirements:** The Court does not have jurisdiction of an action for administrative costs under this Title unless the following conditions are satisfied:

(1) The Commissioner has made a decision denying (in whole or in part) an award for reasonable administrative costs under Code Section 7430(a).

(2) A petition for an award for reasonable administrative

---

\* The amendment is effective with respect to civil actions or proceedings commenced after August 5, 1997.

costs is filed with the Court within the period specified in Code Section 7430(f)(2).

**(d) Burden of Proof:** For the rules regarding the burden of proof in claims for administrative costs, see Rule 232(e).